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WASHINGTON, DC 20036

EXAMINER

SLIFKA, COLIN W

ART UNIT	PAPER NUMBER
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1732

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,012

Applicant(s)

NEUGEBAUER ET AL.

Examiner

COLIN W. SLIFKA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-8 and 10-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-35 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 5 is objected to because of the following informalities: claim 5 has been previously cancelled, yet now appears labeled as “previously presented.” It is noted that the limitations of instant claim 5 read exactly as instant claim 7. It is assumed that inclusion of claim 5, as currently amended, is a simple error and is meant to remain cancelled. Appropriate correction is required. As the limitations of instant claim 5 are already incorporated as instant claim 7, they will only be addressed in reference to claim 7.

Claim 38 is listed as cancelled, so there is no reason to make an official objection. However, it is not clear where, in the history of the case, there was ever a claim 38 to begin with, other than first appearing as cancelled in the claims filed February 6, 2009. As such, it is not clear to Examiner why a claim 38 is even included in the listing of the claims.

Double Patenting

Applicant is advised that should claim 7 be found allowable, claim 5 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 4-8, 10-14, 20, 26-27, and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roman (US Patent No. 6,171,602) in view of Deller et al. (US Patent No. 5,776,240), Hasenzahl et al. (WO 03/037379 A1, hereinafter referred to as Hasenzahl), and Degussa press release titled "Dry Binder - A New Concept for Pressed Powders," (June 12, 2003; hereinafter referred to as "the press release"), Hasenzahl et al (2003/0108580, hereinafter referred to as Hasenzahl '580), and Oswald et al (EP 1182168).

Roman teaches powder comprising silanized porous silica granules used as carriers of various foodstuff additives, such as annatto extract, beta-carotene, beet powder, caramel color, carrot oil, fruit juice, paprika, riboflavin, saffron, turmeric, vegetable juice, and red cabbage (col. 2, lines 26-33). Regarding claims 1 and 35, Roman teaches that the silica granules absorb liquids in approximately a 1:1 ratio (col. 4, lines 62-67).

Roman does not teach the use of pyrogenically prepared silica.

Deller teaches pyrogenically prepared silica granules made by spray drying Aerosil (which is made by flame hydrolysis) and heat treating the result, with exactly the claimed dimensions and characteristics (see abstract) which can be used as adsorption media (col. 1, lines 28-29). It should be noted that while the particular silica of Deller is beneficial for use as a catalyst support, Deller also teaches that such silica granules are

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used as adsorption media (col. 1, lines 29-20). Deller even teaches that while spray dried granules of pyrogenically prepared silicon dioxides are known to be used as catalyst supports, they are not "optimally" suitable for such a purpose (Background). In addition, the press release teaches that the granules of Deller (Aeroperl) are known to be useful as adsorbates, and Hasenzahl teaches that such pyrogenically prepared silica is superior to precipitated silica, which typically has an unacceptably high water content and insufficient purity (p. 4, lines 2-8). Hasenzahl also teaches that such pyrogenically produced silica in granular form are superior to non-granulated pyrogenic silica because of its higher bulk density and tamped density, improved flowability, narrower grain size distribution, and dust-free processing (p. 22, lines 25-30). Furthermore, Hasenzahl '580 teaches the use of pyrogenically-produced silica granulates as an adsorbate with at least one other substance including auxiliary substances, such as absorbents, antioxidants, biological additives, flavorings, preservatives, vegetable constituents, and vitamins (abstract and par. 98), all of which can be considered to fit the broad categories of "foodstuff" and "feedstuff" additives, and potentially even plant protection agents. Oswald, in a similar invention of pyrogenically produced silica, teaches an intended use for the silica in glass production; however, Oswald also teaches that the silica may be used as an adsorbent and in the food industry (par. 20).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Deller's granules into Roman's powder because they are known to be useful as an adsorbate and to be superior to precipitated alternatives, as

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suggested by of Deller et al., Hasenzahl, Degussa press release, Hasenzahl '580, and Oswald.

As for the amount of additive adsorbed on the silica, Roman teaches that the silica granules absorb liquids in approximately a 1:1 ratio, thus amount of additive in amount of 0.001-200g per 100 g silica granule would have been obvious to one of ordinary skill in the art.

Regarding claims 2, 11, and 26, Roman teaches the use of riboflavin, which is both a food dye and a feedstuff additive.

Regarding claims 4, 8, and 10, Deller teaches adsorbate particles silanized with any of the claimed silane compounds.

Regarding claims 5-7 and 32, Deller teaches exactly the claimed dimensions and characteristics.

Regarding claims 12-13 and 20, Roman teaches the use of ascorbic acid, which is an antioxidant, a food preservative, and an acid.

Regarding claim 14, Roman teaches the use of glyceryl ester derivatives as emulsifiers.

Regarding claim 25, Roman teaches the use of cinnamates, which are aroma agents.

Regarding claim 27, Roman teaches the use of cysteine, which is a chemical intermediate for the production of various food additives.

Regarding claim 33, Roman teaches the use of turmeric oleoresin.

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Regarding claim 34, Roman teaches the use of beta-carotene, which is a free radical interceptor.

Claims 1, 3, 28, and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minemoto (JP 02049707 A) in view of Deller, Hasenzahl, the press release, Hasenzahl '580, and Oswald.

Minemoto teaches a powder of boric acid adsorbed on porous silica granules. Boric acid acts as both an insecticide and a fungicide.

Minemoto does not teach the use of pyrogenically prepared silica.

Deller teaches pyrogenically prepared silica granules made by spray drying Aerosil (which is made by flame hydrolysis) and heat treating the result, with exactly the claimed dimensions and characteristics (see abstract) which can be used as adsorption media (col. 1, lines 28-29). In addition, the press release teaches that the granules of Deller (Aeroperl) are known to be useful as adsorbates, and Hasenzahl teaches that such pyrogenically prepared silica is superior to precipitated silica, which typically has an unacceptably high water content and insufficient purity (p. 4, lines 2-8). Hasenzahl also teaches that such pyrogenically produced silica in granular form are superior to non-granulated pyrogenic silica because of its higher bulk density and tamped density, improved flowability, narrower grain size distribution, and dust-free processing (p. 22, lines 25-30). Furthermore, Hasenzahl '580 teaches the use of pyrogenically-produced silica granulates as an adsorbate with at least one other substance including auxiliary substances, such as absorbents, antioxidants, biological additives, flavorings,

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preservatives, vegetable constituents, and vitamins (abstract and par. 98), all of which can be considered to fit the broad categories of "foodstuff" and "feedstuff" additives, and potentially even plant protection agents. Oswald, in a similar invention of pyrogenically produced silica, teaches an intended use for the silica in glass production; however, Oswald also teaches that the silica may be used as an adsorbent and in the food industry (par. 20).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Deller's granules into Minemoto's powder because they are known to be useful as an adsorbate and to be superior to precipitated alternatives. In addition, Minemoto's requirements of 10-5000 Å diameter pores, 0.05-3 cm³/g pore capacity, and 1-300 µm grain diameters are all satisfied by Deller's granules. Regarding the amount of "substance" to amount silicon dioxide granule, the amount that is adsorbed is considered by Examiner to be dependent upon the physical characteristics and properties of the silicon dioxide carrier. As the carrier of Minemoto, as combined with Deller, is substantially similar to that of the instant claims, it is considered to exhibit similar adsorption characteristics. Additionally, it is considered to be within the purview of one having ordinary skill in the art to be able to determine effective amounts of adsorbed material based upon at least the carrier used and the intended use of the final product.

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Claims 1, 19, 21, 29, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park et al. (US Patent No. 5,654,258) in view of Deller, Hasenzahl, the press release, Hasenzahl '580, and Oswald.

Park teaches a composition comprising trifluralin (an herbicide) in porous silica carrier particles. Park does not teach the use of pyrogenically prepared silica. Deller teaches pyrogenically prepared silica granules made by spray drying Aerosil (which is made by flame hydrolysis) and heat treating the result, with exactly the claimed dimensions and characteristics (see abstract) which can be used as adsorption media (col. 1, lines 28-29). In addition, the press release teaches that the granules of Deller (Aeroperl) are known to be useful as adsorbates, and Hasenzahl teaches that such pyrogenically prepared silica is superior to precipitated silica, which typically has an unacceptably high water content and insufficient purity (p. 4, lines 2-8). Hasenzahl also teaches that such pyrogenically produced silica in granular form are superior to non-granulated pyrogenic silica because of its higher bulk density and tamped density, improved flowability, narrower grain size distribution, and dust-free processing (p. 22, lines 25-30). Furthermore, Hasenzahl '580 teaches the use of pyrogenically-produced silica granulates as an adsorbate with at least one other substance including auxiliary substances, such as absorbents, antioxidants, biological additives, flavorings, preservatives, vegetable constituents, and vitamins (abstract and par. 98), all of which can be considered to fit the broad categories of "foodstuff" and "feedstuff" additives, and potentially even plant protection agents. Oswald, in a similar invention of pyrogenically produced silica, teaches an intended use for the silica in glass production; however,

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Oswald also teaches that the silica may be used as an adsorbent and in the food industry (par. 20).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Deller's granules into Park's herbicide composition because they are known to be useful as an adsorbate and to be superior to precipitated alternatives. Regarding the amount of "substance" to amount silicon dioxide granule, the amount that is adsorbed is considered by Examiner to be dependent upon the physical characteristics and properties of the silicon dioxide carrier. As the carrier of Park, as combined with Deller, is substantially similar to that of the instant claims, it is considered to exhibit similar adsorption characteristics. Additionally, it is considered to be within the purview of one having ordinary skill in the art to be able to determine effective amounts of adsorbed material based upon at least the carrier used and the intended use of the final product.

Regarding claims 19, 21, and 34, Park teaches that the particles may be coated in alkyl naphthalene sulfonate sodium salt (col. 4, line 49), which is an alkali salt used as a wetting agent.

Claims 1, 15-18, and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson et al. (US Patent No. 6,004,584) in view of Deller and the press release.

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Peterson teaches a body powder comprising powder carriers such as soy starch, modified corn starch, or microcrystalline cellulose (col. 3, lines 45-50); and binders such as isopropyl or magnesium myristate (col. 6, line 55).

Peterson does not teach the use of pyrogenically prepared silica.

The press release teaches that granulated fumed silica (e.g. Aeroperl, the material taught by Deller) is an ideal replacement for isopropyl or magnesium myristate as a dry binder in cosmetic applications, as it adsorbs the oily components and releases them upon compression. Deller teaches pyrogenically prepared silica granules made by spray drying Aerosil (which is made by flame hydrolysis) and heat treating the result, with exactly the claimed dimensions and characteristics (see abstract) which can be used as adsorption media (col. 1, lines 28-29).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use Deller's silica granules (Aeroperl) as a dry binder in Peterson's body powder because "Dry Binder" teaches that silica granule adsorbates are superior dry binders and Deller specifically teaches that it is one intended use of the granules. Regarding the amount of "substance" to amount silicon dioxide granule, the amount that is adsorbed is considered by Examiner to be dependent upon the physical characteristics and properties of the silicon dioxide carrier. As the silica of Peterson, as combined with Deller, is substantially similar to that of the instant claims, it is considered to exhibit similar adsorption characteristics. Additionally, it is considered to be within the purview of one having ordinary skill in the art to be able to determine effective amounts

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of adsorbed material based upon at least the carrier used and the intended use of the final product.

Regarding claims 15-18, microcrystalline cellulose can be used as a gelling agent, thickener, binder, or stabilizer.

Regarding claim 22, the modified corn flour is an antilumping agent.

Regarding claim 23, soy starch contains glutamic acid, which is a flavor intensifier.

Claims 1 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Technical Bulletin Pigments No. 31 (Degussa AG, November 1995) in view of Deller, Hasenzahl, the press release, Hasenzahl '580, and Oswald.

The Technical Bulletin teaches that silanized silica is useful as an adsorbate for molasses in order to make a free-flowing powder.

The Technical Bulletin does not teach the use of pyrogenically prepared silica granules.

Deller teaches pyrogenically prepared silica granules made by spray drying Aerosil (which is made by flame hydrolysis) and heat treating the result, with exactly the claimed dimensions and characteristics (see abstract) which can be used as adsorption media (col. 1, lines 28-29). In addition, the press release teaches that the granules of Deller (Aeroperl) are known to be useful as adsorbates, and Hasenzahl teaches that such pyrogenically prepared silica is superior to both precipitated silica, which typically has an unacceptably high water content and insufficient purity (p. 4, lines 2-8), and to

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loose pyrogenic silica adsorbates, which typically have insufficient flowability (p. 3, lines 22-33). Furthermore, Hasenzahl '580 teaches the use of pyrogenically-produced silica granulates as an adsorbate with at least one other substance including auxiliary substances, such as absorbents, antioxidants, biological additives, flavorings, preservatives, vegetable constituents, and vitamins (abstract and par. 98), all of which can be considered to fit the broad categories of "foodstuff" and "feedstuff" additives, and potentially even plant protection agents. Oswald, in a similar invention of pyrogenically produced silica, teaches an intended use for the silica in glass production; however, Oswald also teaches that the silica may be used as an adsorbent and in the food industry (par. 20).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use Deller's granules as an adsorbate for molasses as taught in the Technical Bulletin because they are known to be useful as an adsorbate and to be superior to loose or precipitated alternatives. Regarding the amount of "substance" to amount silicon dioxide granule, the amount that is adsorbed is considered by Examiner to be dependent upon the physical characteristics and properties of the silicon dioxide carrier. As the carrier of the Technical Bulletin, as combined with Deller, is substantially similar to that of the instant claims, it is considered to exhibit similar adsorption characteristics. Additionally, it is considered to be within the purview of one having ordinary skill in the art to be able to determine effective amounts of adsorbed material based upon at least the carrier used and the intended use of the final product.

Response to Arguments

Applicant's response to the previous action (filed April 15, 2011) indicates that it is an Amendment After Final, and likewise is a reply to a final Office action. However, the previous action mailed February 23, 2011 was a non-final action. It should be noted that the instant response is being treated as a reply to a non-final and not a final Office action.

Applicant's arguments filed April 15, 2011 have been fully considered but they are not persuasive.

Applicant states that the adsorbate of the instant claims exhibits excellent flow properties, low water content, and high purity of the starting granules, and argues that the prior art of record fails to suggest such superior properties. Examiner respectfully disagrees. As stated in prior Office actions, the carrier base of Deller is the *exact* same silicon dioxide carrier of the instant claims. As such, the combinations of prior art teachings certainly would exhibit substantially similar properties, which are attributed primarily to said silica carrier. Additionally, Hasenzahl does teach excellent flow properties, low water content, and high purity of pyrogenic silica in granular form, as shown above. Applicant argues that the results shown in the Examples of the instant specification show unexpected and superior results. Examiner respectfully disagrees. The comparative examples compare precipitated silica to the granular pyrogenic silicon dioxide of the instant invention. As Hasenzahl specifically teaches that such granular pyrogenic silicon dioxide is superior to both precipitated silica and even non-granular pyrogenic silica, more specifically in characteristics such as flowability, water content,

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and purity, while said results may in fact show superiority over precipitated silica, they are not considered to be unexpected. Rather, they are considered to be expected.

Regarding Roman, Applicant argues that the composition of Roman is not a flowable granular silica aggregate containing an active substance. Regarding the composition being granular and flowable, the title of the invention states that the material is a flowable powder. Regarding the type of silica, Applicant argues that the silica is not identified with more specificity than being porous. While it is not clear if Applicant intends such a fact to be an argument against the combination of Roman with the other prior art references, Examiner considers such a fact to strengthen the rejection. As stated by Applicant, Roman does not provide specifics with regard to the silica used as the carrier. If one of ordinary skill in the art was to recreate the invention of Roman, which does not particularly limit the silica carrier, they would have found ample motivation to use the superior silica carrier of Deller in view of the prior art of record, as constructed in the rejections both above and in prior actions. Applicant refers to Example II of Roman. Example II appears to be within the claimed ratio, as does Example I.

Regarding Deller, Applicant argues that because the carrier is preferably used as a catalyst support, there is no motivation to combine with the other references. Examiner respectfully disagrees. Deller teaches the traditional uses of granular pyrogenically prepared silicon dioxide, and teaches a disadvantage that they are not optimally suitable for use as catalyst supports. The invention of Deller has the added advantage of being successfully used as a catalyst support, but this is not considered to

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take away from or prohibit said traditional uses. Additionally, the teachings of Hasenzahl suggest such properties as those of the Table of the instant specification (page 47, as filed).

Applicant argues that at best, the Degussa Press Release would be an invitation to experiment. Examiner respectfully disagrees. Said Press Release is relied upon to show known and suitable uses for the silica carrier of Deller, which is the same as instantly claimed.

Regarding Hasenzahl, the teachings of Hasenzahl suggest the superior properties that are argued by Applicant, as shown above. Furthermore, Applicant argues that the preferred use of the silica of Hasenzahl bars it from other uses. Examiner respectfully disagrees (see Response to Arguments in last action, mailed February 23, 2011). Additionally, the portion of Hasenzahl to which Applicant refers actually teaches that such silica materials **may** also be used for the production of pharmaceutical preparations without their simultaneously acting as carriers and/or adsorption agents (emphasis added). Examiner considers this a mere suggestion of optional uses for the inventive material, and which certainly does not teach away from any of said uses.

Applicant's arguments regarding Minemoto are considered to have been sufficiently addressed above. Regarding the lack of specificity of the silica used in Minemoto, see above regarding such "ambiguous" silica of Roman.

Applicant states that the silica of Park is precipitated silica. Applicant argues that precipitated silica is distinct from the claimed granular pyrogenic silica. While this may

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be true, it is not clear to Examiner how this applies to the rejection of record. Said rejection clearly points out that Park does not disclose the use of pyrogenically prepared silica. As seen both above and in the prior action, the prior art teaches that granular pyrogenic silica is superior to precipitated silica. As such, rejection is maintained. The rest of Applicant's arguments in part III (Park) are considered to have been sufficiently addressed above.

Regarding Peterson, Applicant states that Peterson refers to Aerosil® and Cab-O-Sil® and also powder carriers. Applicant further states that "none are silica of any type." This is simply incorrect. Both Aerosil® and Cab-O-Sil® are fumed silica, a.k.a. pyrogenic silica. It is assumed that Applicant only intended to refer to the "powder carriers" as not being silica. It is not clear how this pertains to the rejection of record. Applicant also argues that the powders do not appear to be feedstuffs, foodstuffs, or plant protection agents as required by the claims. Examiner respectfully disagrees. As stated both above and in the prior action, microcrystalline cellulose can be used as a gelling agent, thickener, binder, or stabilizer; modified corn flour is an antilumping agent; and soy starch contains glutamic acid, which is a flavor intensifier. As defined in claim 2, gelling agents, thickeners, binders, stabilizers, antilumping agents, and flavor intensifiers all fall within the category of food stuff additives. The rest of Applicant's arguments in part IV (Peterson) are considered to have been sufficiently addressed above.

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Applicant's arguments regarding The Technical Bulletin are considered to have been sufficiently addressed above. The prior art references are not limited to their preferred embodiments or their intended uses.

Applicant refers to a BPAI decision suggesting the need for an equivalency teaches in the substitution of one silica type for another. Examiner believes that in the present application, sufficient motivation for combining the prior art references has been provided. It is not clear why Applicant suggests a lack of equivalency. As shown above, such silica carriers are well known to support a variety of materials, including "foodstuffs." Regarding the various uses of the silica of the prior art, what is used as a "pigment" in a cosmetic application may be considered a "foodstuff" in another, such uses or brandings do not limit the physical properties of the materials. It is noted that instant claim 2 includes "dyestuffs" as a "foodstuff" additive.

Ultimately, the carrier of the instant claims is *exactly* disclosed by Deller. Applicant has included the additives in order to substantiate the intended use of the instant invention; however, the claimed additives are not absolutely limited to such uses as foodstuff, feedstuff, or plant protection. Examiner considers the prior art of record to provide ample motivation to use the adsorbate silica of Deller as a carrier of the claimed "foodstuff additives," "feedstuff additives," and/or "plant protection agents."

For additional remarks which may not have been repeated in the instant action, see Response to Arguments in the last action, mailed February 23, 2011.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLIN W. SLIFKA whose telephone number is (571)270-5830. The examiner can normally be reached on Monday-Thursday, 9:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melvin Curtis Mayes can be reached on 571-272-1234. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/COLIN W SLIFKA/
Examiner, Art Unit 1732

June 26, 2011

/Melvin Curtis Mayes/
Supervisory Patent Examiner, Art Unit 1732